

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re : Douglas LeCrone, Daniel A. Murphy and Denis Hall
Serial No. : 10/692,285
Filed : October 23, 2003
FOR : METHOD AND APPARATUS FOR MONITORING UPDATE ACTIVITY IN A DATA STORAGE FACILITY
EXAMINER : Khanh Pham
ART UNIT : 2125

April 16, 2007

Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

Sir:

PETITION TO REVIVE APPLICATION BASED ON A FAILURE TO RECEIVE
OFFICE ACTION

Applicants hereby petition the Examiner to revive the above-identified patent application because Applicant's representative failed to receive an Office Action.

According to the United States Patent and Trademark Office records available through Private Pair, a Notice of Non-Compliant Amendment was sent to George A. Herbster, attorney of record in the above-identified application on or about August 10, 2006.

The attached Declaration of Mary C. Hoggard describes the steps Mary C. Hoggard takes upon receipt of any document like the Notice of Non-Compliant Amendment and the steps she took to

determine whether the Notice was ever received. That Declaration (1) demonstrates that Mary C. Hoggard is an experienced docket clerk and (2) defines the steps in which mail has been handled in this office since 1990.

The attached Declaration of George A. Herbster describes the operation the docketing system used in this office. It also describes a search and results of that search. Specifically, that Declaration sets forth the fact that only a February 10, 2007 entry would still have been included in the active file. A copy of the calendar page for that date is attached to the Herbster Declaration. Any earlier entries are now archived and that the archive has been searched. Only the entries for prior responses to (1) a Notice of Missing Parts and (2) the Office Action for which a response was due August 3, 2006 and filed on that same date. The specific entries are included in Exhibit 2 to the Herbster Declaration.

A "print screen" copy of the Private Pair entry for the above-identified application contains two entries for the Notice of Non-Compliant Amendment. An inspection of the images discloses what appear to be two different copies of the Notice of Non-Compliant Amendment in the file.

We conclude that the foregoing Notice of Non-Compliant Amendment was either (1) never mailed from the United States Patent and Trademark Office or (2) lost in the mail. In either event, the Notice was never received by this office.

A response overcoming the issues raised in the Notice of Non-Compliant Amendment is filed herewith.

Therefore Applicants respectfully request that the prosecution of this application be continued as if the response to the Notice of Non-Compliant Amendment had been filed in a timely manner.

Applicants are paying the petition fee. If, however, it is determined that the petition fee is not required, Applicants respectfully request a refund to their Deposit Account No. 05-0889.

If there are any questions, we urge the Examiner to call us collect.

Respectfully Submitted,

/George A Herbster/

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ATTACHMENT TO
PETITION TO REVIVE APPLICATION BASED ON A FAILURE TO RECEIVE
OFFICE ACTION

PRIVATE PAIR PRINT SCREEN

Selected Patent Application Information Screen					
<input type="checkbox"/> Download		<input type="checkbox"/> Order Certified Application as Filed		<input type="checkbox"/> Order Certified File Wrapper	
PRINT					
Search Application by:	Publication Transaction	Image File	Continuity	Publication Address & Priority	Provisional
New Case	Priority Document Date	Wrapper	Date	Document Status Report	Review
This application is officially maintained in electronic form. To View: Click the desired Document Description. To Download and Print: Check the desired document(s) and click Start Download.					
Available Documents					
Mail Room Date	Document Description	Document Category	Page Count	Select All	Start Download
08-10-2006	Notice to the Applicant regarding a Non-Compliant Amendment	PROSECUTION	2	<input type="checkbox"/>	<input type="checkbox"/>
08-10-2006	Notice to the Applicant regarding a Non-Compliant Amendment	PROSECUTION	2	<input type="checkbox"/>	<input type="checkbox"/>
08-03-2006	Amendment - After Non-Final Rejection	PROSECUTION	1	<input type="checkbox"/>	<input type="checkbox"/>
08-03-2006	Claims	PROSECUTION	12	<input type="checkbox"/>	<input type="checkbox"/>
08-03-2006	Amendment, Remarks, or Remarks Made in an Amendment	PROSECUTION	21	<input type="checkbox"/>	<input type="checkbox"/>
08-03-2006	Technical Specification	PROSECUTION	2	<input type="checkbox"/>	<input type="checkbox"/>
08-03-2006	Fee Assessment (PTO-941)	PROSECUTION	2	<input type="checkbox"/>	<input type="checkbox"/>
08-03-2006	Notice Letter Made in Nonfinal	PROSECUTION	2	<input type="checkbox"/>	<input type="checkbox"/>
05-03-2006	Nonfinal Rejection	PROSECUTION	24	<input type="checkbox"/>	<input type="checkbox"/>
05-03-2006	Letter of Transmittal dated 05-03-2006 for a nonfinal rejection	PRIOR ART	1	<input type="checkbox"/>	<input type="checkbox"/>
05-03-2006	Letter of Transmittal dated 05-03-2006	PRIOR ART	1	<input type="checkbox"/>	<input type="checkbox"/>
05-03-2006	Information Disclosure Statement (IDS)	PROSECUTION	1	<input type="checkbox"/>	<input type="checkbox"/>
04-20-2006	Examiner Search Report and ready	PROSECUTION	3	<input type="checkbox"/>	<input type="checkbox"/>
06-04-2004	Nonfinal Rejection Letter	PROSECUTION	1	<input type="checkbox"/>	<input type="checkbox"/>
06-04-2004	Information Disclosure Statement (IDS) filed	PROSECUTION	2	<input type="checkbox"/>	<input type="checkbox"/>
01-27-2004	Examiner Informative Notes	PROSECUTION	2	<input type="checkbox"/>	<input type="checkbox"/>
10-23-2003	Fee Worksheet (PTO-941)	PROSECUTION	1	<input type="checkbox"/>	<input type="checkbox"/>
10-23-2003	Fee Worksheet (PTO-941)	PROSECUTION	1	<input type="checkbox"/>	<input type="checkbox"/>
10-23-2003	Transmittal of new Authorization	PROSECUTION	2	<input type="checkbox"/>	<input type="checkbox"/>
10-23-2003	Correspondence	PROSECUTION	23	<input type="checkbox"/>	<input type="checkbox"/>
10-23-2003	Claims	PROSECUTION	17	<input type="checkbox"/>	<input type="checkbox"/>
10-23-2003	Abstract	PROSECUTION	1	<input type="checkbox"/>	<input type="checkbox"/>
10-23-2003	Drawings	PROSECUTION	7	<input type="checkbox"/>	<input type="checkbox"/>